

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Attorney Docket No. 14222US02 (BU 2739)

IN THE APPLICATION OF:)	
)	<u>Electronically Filed on August 10, 2010</u>
Martin Lund)	
)	
SERIAL NO.: 10/647,963)	
)	
FILED: August 26, 2003)	
)	
FOR: SYSTEM AND METHOD FOR)	
INTEGRATING MULTISERVER)	
PLATFORMS)	
)	
EXAMINER: BARQADLE, YASIN, M)	
)	
GROUP ART UNIT: 2456)	
)	
CONFIRMATION NO.: 5243)	
)	
CUSTOMER NO.: 23446)	

PRE APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets.

Respectfully submitted,

Date: August 10, 2010

By: /Philip Henry Sheridan/
Philip Henry Sheridan
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Attorney for Applicant

REMARKS

The present application includes pending claims 1-15, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-15 stand rejected under 35 U.S.C. § 102(e) as being anticipated by McGraw et al. (U.S. Publication No. 2002/0188718, hereinafter “McGraw”). Without acknowledging that McGraw qualifies as prior art under 35 U.S.C. §102(e), the Applicant respectfully traverses the rejection for at least the following reasons.

With regard to the anticipation rejections, MPEP 2131 states, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131 also states, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Regarding claim 9, the Applicant respectfully submits that McGraw fails to teach, suggest, or disclose, for example, “a first multiserver platform comprising **a network interface and a first switch blade**,” and “at least a second multiserver platform comprising a second **switch** blade coupled to said first **switch** blade of said first multiserver platform,” as set forth in Applicant’s independent claim 9.

The final Office Action alleges that McGraw’s Figures 1 and 7 and Paragraphs [0138]-[0144] teach “a first multiserver platform comprising **at least one** of a network interface and a first switch blade.” (Final Office Action, Page 5, Line 18 – Page 6, Line 3). However, Applicant’s independent claim 9 recites “a first multiserver platform comprising **a network interface and a first switch blade**.” In other words, the final Office Action fails to make a *prima facie* case of anticipation at least because the final Office Action fails to address the actual limitations of Applicant’s independent claim 9. The Applicant respectfully notes that final Office Action’s failure to address the Applicant’s claim limitations was indicated in the Applicant’s July 6, 2010 Response; however, the Advisory Action mailed July 16, 2010 failed to

address the Applicant's argument. Because the final Office Action fails to make a *prima facie* case of anticipation for at least independent claim 9, the rejection of Applicant's independent claim 9 under 35 U.S.C. § 102(e) amounts to **clear error**.

Further, although McGraw teaches that its link cards/board may be a network interface card (McGraw, Paragraph [0128]), nowhere in McGraw is there any disclosure regarding a switch blade **in addition to** McGraw's link card/board (i.e., network interface card). Put another way, Applicant's independent claim 9 recites, among other things, both a network interface and a first switch blade. The Applicant notes that Applicant's network interface and first switch blade are separate and distinct elements. As such, McGraw's mere disclosure of its link card/board cannot teach both a network interface and a first switch blade. Thus, the final Office Action's allegation that McGraw's disclosure of a link card/board teaches "a first multiserver platform comprising a network interface **and** a first **switch** blade" amounts to **clear error**.

Additionally, the Applicant notes that final Office Action-cited Figure 1 of McGraw fails to show multiserver platforms and switch blades, let alone "a first multiserver platform comprising a network interface and a first switch blade," and "at least a second multiserver platform comprising a second switch blade coupled to said first switch blade of said first multiserver platform," as set forth in Applicant's independent claim 9. Instead, McGraw's Figure 1 and its supporting disclosure merely disclose a network 30 having computing devices 32-35 having associated consoles 36-39, memory modules 45-48 and interfaces 40-43, which connect the computing devices 32-35 to a console server 50 via communication links 52-55. (*See e.g.*, McGraw, Figure 1 and Paragraph [0025]). As such, the final Office Action's allegation that McGraw's Figure 1 discloses the Applicant's claim limitations amounts to **clear error**.

Further, with regard to McGraw's Figure 7 and Paragraphs [0138]-[0144] and [0159-0161], it appears the final Office Action is alleging that McGraw's link cards/boards are **switch** blades; however, nowhere in McGraw is there any disclosure regarding McGraw's link cards/boards performing any switching functions. In fact, nowhere in McGraw do the terms "switch" and "switching" appear in McGraw. Rather, McGraw describes its link cards/boards as

network interface cards or bridges (McGraw, Paragraph [0128]), which is different than switch blades. For example, as described in McGraw's Paragraph [0144], McGraw's link cards/boards merely pass messages between inter-chassis RS-485 bus and local RS-485 bus. (McGraw, Paragraph [0144]). In other words, McGraw's link cards/boards are merely interfaces between inter-chassis and local buses, which are different than switch blades. As such, the statements in the final Office Action and Advisory Action alleging that McGraw's disclosure of a link board/card teaches a switch blade amounts to clear error.

Regarding independent claims 1 and 5, the Applicant respectfully submits that McGraw fails to teach, suggest, or disclose, for example, "receiving at least one packet from at least a first switch blade associated with a first multiserver platform," as set forth in Applicant's independent claims 1 and 5.

The final Office Action alleges that McGraw's Figures 1 and 7 and Paragraphs [0128]-[0131] teach "receiving at least one packet from at least one of a first switch blade associated with a first multiserver platform," as set forth in Applicant's independent claims 1 and 5. (Final Office Action, Page 3, Lines 1-2). The Applicant first notes that McGraw's Figure 1 fails to show a multiserver platform and a first switch blade, let alone "receiving at least one packet from at least a first switch blade associated with a first multiserver platform," as set forth in Applicant's independent claims 1 and 5. Instead, McGraw's Figure 1 and its supporting disclosure merely disclose a network 30 having computing devices 32-35 having associated consoles 36-39, memory modules 45-48 and interfaces 40-43, which connect the computing devices 32-35 to a console server 50 via communication links 52-55. (*See e.g.*, McGraw, Figure 1 and Paragraph [0025]). As such, the final Office Action's allegation that McGraw's Figure 1 discloses the Applicant's claim limitations amounts to clear error.

Further, with regard to McGraw's Figure 7 and Paragraphs [0128]-[0131], it appears the final Office Action is alleging that McGraw's link card/board is a switch blade; however, nowhere in McGraw is there any disclosure regarding McGraw's link card/board performing any switching functions. Rather, McGraw describes its link card/board as a network interface card or

bridge (McGraw, Paragraph [0128]), which is different than a **switch** blade. For example, as described in McGraw's Paragraph [0144], McGraw's link card/board merely passes messages between inter-chassis RS-485 bus and local RS-485 bus. (McGraw, Paragraph [0144]). In other words, McGraw's link card/board is merely an interface between inter-chassis and local buses, which is different than a **switch** blade. As such, the statements in the final Office Action and Advisory Action alleging that McGraw's disclosure of a link board/card teaches a switch blade amounts to **clear error**.

The Response to Arguments section of the final Office Action cites to Paragraphs [29] and [31] of the Applicant's Specification in alleging that "McGraw's link card/ board is similar in hardware (plug-in card) and function (provide connectivity between blade server and a network)." The Applicant notes, however, that the final Office Action ignores the sections of the Applicant's Specification that discuss the switching functions performed by Applicant's switch blade and central switch. (*See e.g.*, Applicant's Specification, Paragraphs [32], [40]-[41], [44]-[45], [47] and [49]). Nowhere in McGraw is there any disclosure that McGraw's link card/board provides any switching functions whatsoever. In fact, the terms "switch" and "switching" do not even appear in McGraw.

One of ordinary skill in the art would readily understand that just because a component is embodied as a plug-in card does not necessarily make it a **switch** blade. Similarly, one of ordinary skill in the art would readily understand that just because a component provides connectivity between a blade server and a network does not necessarily indicate that the component is a **switch** blade. Rather, one of ordinary skill in the art would readily understand that a **switch** blade provides, among other things, switching functionality. As such and as discussed above with regard to McGraw's disclosure regarding its link card/board merely passing messages between inter-chassis RS-485 bus and local RS-485 bus, McGraw's link card/board is clearly not a **switch** blade.

The Advisory Action states that "Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-

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55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).” (Advisory Action, Page 2). However, the Applicant reminds the Examiner that the “broadest construction rubric coupled with the term ‘comprising’ does not give the PTO an unfettered license to interpret claims to embrace anything remotely related to the claimed invention. Rather, claims should always be read in light of the specification and teaching in the underlying patent.” *See In re Suitco Surface, Inc.*, 2010 U.S. App. LEXIS 7620 (Fed. Cir. April 14, 2010). Further, “the PTO’s ‘broadest’ interpretation must be reasonable, and must be in conformity with the invention as described in the specification.” *In re Ravi Vaidyanathan*, Case No. 09-1404 (C.A. Fed, May 19, 2010). Clearly, the final Office Action’s and Advisory Action’s “interpretation” that a reference that fails to even mention the terms “switch” and “switching” teaches a switch blade is clearly unreasonable. As such, the Applicant respectfully submits that such interpretation amounts to clear error.

The Applicant notes that dependent claims 2-4, 6-8 and 10-15 depend from independent claims 1, 5 and 9, respectively, and are therefore allowable for at least the reasons set forth above with regard to independent claims 1, 5 and 9. The Applicant further notes that each of dependent claims 2-4, 6-8 and 10-15 is independently allowable.

Thus, Applicant respectfully submits that claims 1-15 of the present application should be in condition for allowance at least for the reasons discussed above and request that the outstanding rejections be reconsidered and withdrawn. The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: August 10, 2010

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